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7 an individual and on behalf of all others similarly situated

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 ERIC HOFMANN, an individual and on                          } CASE NO. 3:14-cv-02227-CAB-JLB  
12 behalf of all others similarly situated,                          }  
13                          Plaintiff,                          }  
14                          vs.                          }  
15 PEG PEREGO U.S.A., INC., an Indiana                          } FIRST AMENDED NATIONWIDE  
16 corporation; and DOES 1 through 100,                          } CLASS ACTION COMPLAINT  
17 inclusive,                          } FOR:  
18                          Defendants.                          }  
19                          }  
20                          }  
21                          } (1) VIOLATION OF BUSINESS  
22                          } & PROFESSIONS CODE  
23                          } SECTIONS 17200 *ET SEQ.*  
24                          } (CALIFORNIA UNFAIR  
25                          } COMPETITION LAW);  
26                          }  
27                          } (2) VIOLATION OF BUSINESS  
                        } & PROFESSIONS CODE  
                        } SECTION 17533.7 (FALSE  
                        } "Made in U.S.A." CLAIM);  
                        } and  
                        } (3) VIOLATION OF  
                        } CONSUMERS LEGAL  
                        } REMEDIES ACT (CIVIL  
                        } CODE SECTION 1750 *ET  
                        } SEO.*)

1 COMES NOW, plaintiff ERIC HOFMANN ("Plaintiff"), as an individual  
 2 and on behalf of the general public and all others similarly situated, by his  
 3 undersigned attorneys, alleges as follows:

4 **NATURE OF THE CASE**

5 1. This is a national class action case brought on behalf of all purchasers  
 6 of children's riding vehicles (hereinafter referred to as "Vehicles") manufactured,  
 7 distributed, marketed, and/or sold by PEG PEREGO U.S.A., INC. (hereinafter as  
 8 "PEG PEREGO") in California and nationwide that were labeled as "Made in  
 9 USA" or "Made in U.S.A." The Vehicles are sold through various retailers  
 10 throughout the United States.

11 2. As stated by the California Supreme Court in *Kwikset v. Superior*  
 12 *Court* (January 27, 2011) 51 Cal.4th 310, 328-29:

13  
 14 **Simply stated: labels matter.** The marketing industry is  
 15 based on the premise that labels matter, that consumers  
 16 will choose one product over another similar product  
 17 based on its label and various tangible and intangible  
 18 qualities they may come to associate with a particular  
 19 source....In particular, to some consumers, the "Made in  
 20 U.S.A." label matters. A range of motivations may fuel  
 21 this preference, from the desire to support domestic jobs,  
 22 to beliefs about quality, to concerns about overseas  
 23 environmental or labor conditions, to simple patriotism.  
 24 The Legislature has recognized the materiality of this  
 25 representation by specifically outlawing deceptive and  
 26 fraudulent "Made in America" representations. (§  
 27 17533.7; see also Civ.Code, § 1770, subd. (a)(4)  
 28 [prohibiting deceptive representations of geographic  
 origin].) The object of section 17533.7 "is to protect  
 consumers from being misled when they purchase  
 products in the belief that they are advancing the interests  
 of the United States and its industries and workers...".

1       3. Through an unlawful, deceptive and unfair course of conduct, PEG  
2 PEREGO, and DOES 1 through 100 (collectively "Defendants"), manufactured,  
3 marketed, and/or sold a variety of Vehicles to consumers nationwide with the false  
4 designation and representation that Defendants' Vehicles were "Made in USA" or  
5 "Made in U.S.A." during the relevant four year statutory time period. The "Made  
6 in USA" claim was clearly printed on the product packaging. Contrary to the  
7 "Made in USA" claim, however, the offending Vehicles were manufactured or  
8 produced from some component parts that were manufactured outside of the  
9 United States in violation of California law, federal law, and the laws of the other  
10 49 states and the District of Columbia. In fact, and on information and belief,  
11 major subcomponents of the "Made in USA" labeled John Deere Farm Power  
12 Brand 12 Volt Riding Vehicle<sup>1</sup> (manufactured by PEG PEREGO) that Plaintiff  
13 purchased are foreign made, including but not limited to the battery, wiring  
14 harnesses, electric battery charger, electric motors, decals (including two "Made in  
15 the USA" decals for prominent display on the toy itself), wiring connectors, fuses,  
16 thermo protector, switches, gearing, screws, rivets, bolts, lock washers, and/or  
17 washers. The inclusion of this many foreign-made parts in the Vehicle renders the  
18 "Made in USA" representation improper under California and federal law.

## PARTIES

20 || 4. Plaintiff is an individual residing in San Diego, California

21 || 5. Defendant PEG PEREGO U.S.A., INC. is a corporation that is

23       <sup>1</sup> Plaintiff intends to seek class certification as to *all* models of PEG PEREGO  
24 Vehicles sold in California that were labeled “Made in USA” (that included  
25 foreign-made component parts) and not just the single model purchased by  
26 Plaintiff. As such, the PEG PEREGO Class Vehicles include, but are not limited  
27 to the John Deere Farm Power Brand 12 Volt Riding Vehicle, the Polaris Ranger,  
the IH Magnum Tracktor, the Polaris Outlaw, the John Deere Mini, the John Deere  
Ground Force, the Polaris Sportsman, the Polaris Ranger RZR, the Polaris RZR,  
the Power Scoop, the John Deere Gator, and other PEG PEREGO Vehicle models  
as will be discerned during discovery.

organized and exists under the laws of the State of Indiana. PEG PEREGO can be served via its principle business address at 3625 Independence Drive, Fort Wayne, IN 46808.

4       6. Plaintiff is ignorant of the true names and capacities of the defendants  
5 sued herein as DOES 1-100, inclusive; therefore, Plaintiff sues these defendants by  
6 such fictitious names. Plaintiff is informed and believes that each of the fictitious  
7 named defendants are legally responsible in some manner for the occurrences  
8 herein alleged, assisted in and about the wrongs complained herein by providing  
9 financial support, advice, resources or other assistance. Plaintiff will amend the  
10 complaint to allege their true names and capacities when ascertained.

11       7. Plaintiff is informed and believes that all defendants were agents,  
12 servants and employees of their co-defendants, and in doing the things hereinafter  
13 mentioned, were acting within the scope of their authority as such agents, servants  
14 and employees with the permission and consent of their co-defendants.

## **JURISDICTION AND VENUE**

16       8.     This Court has jurisdiction in this matter because Defendants  
17 routinely transact business in San Diego County.

18       9.     Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b)  
19 and 1391(c) in that this is the judicial district in which a substantial part of the acts  
20 and omissions giving rise to the claims occurred.

## **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22       10. Plaintiff incorporates herein each and every allegation contained in  
23 paragraphs 1 through 9, inclusive, as though fully set forth herein.

24        11. During the relevant four year statutory time period, Defendants  
25 manufactured, marketed, and/or sold Vehicles that had printed on the product  
26 packaging that the Vehicles were “Made in USA.”

27 12. Contrary to the "Made in USA" claims, however, the Vehicles were

1 made, manufactured or produced with component parts that are manufactured  
2 outside of the United States. The foreign-made component parts in the John Deere  
3 Farm Power Brand 12 Volt Riding Vehicle purchased by Plaintiff include, on  
4 information and belief, the battery, wiring harnesses, electric battery charger,  
5 electric motors, decals (including two "Made in the USA" decals for prominent  
6 display on the toy itself), wiring connectors, fuses, thermo protector, switches,  
7 gearing, screws, rivets, bolts, lock washers, and/or washers. Discovery may reveal  
8 additional foreign-made component parts.

9       13. Defendants marketed and represented to the general public that their  
10 Vehicles were "Made in USA." In addition, Defendants concealed the true country  
11 of origin of their "Made in USA" labeled Vehicles to the general public. The  
12 disclosure of this information was necessary in order to make Defendants'  
13 representation not misleading for want of disclosure of these omitted facts.  
14 Defendants possess superior knowledge of the true facts that were not disclosed,  
15 thereby tolling the running of any applicable statute of limitations.

16       14. Consumers are particularly vulnerable to these deceptive and  
17 fraudulent practices. Most consumers possess very limited knowledge of the  
18 likelihood that products, including the component parts therein, claimed to be  
19 made in the United States are in fact made in foreign countries. This is a material  
20 factor in many individuals' purchasing decisions, as they believe they are  
21 supporting American companies and American jobs.

22       15. Consumers generally believe that "Made in USA" products are of  
23 higher quality than their foreign-manufactured counterparts. Due to Defendants'  
24 scheme to defraud the market, members of the general public were fraudulently  
25 induced to purchase Defendants' products. California and federal laws are  
26 designed to protect consumers from this type of false representation and predatory  
27 conduct. Defendants' scheme to defraud consumers is ongoing and will victimize  
28

1 consumers each and every day until altered by judicial intervention.

2 **THE PLAINTIFF TRANSACTION**

3       16. On or about June 5, 2014, Plaintiff purchased Defendants' John Deere  
4 Farm Power Brand 12 Volt Riding Vehicle product at a San Diego Wal-Mart store.  
5 At the time of purchase, the product itself was marked with a "Made in USA"  
6 designation when it was in fact comprised of component parts made outside of the  
7 United States (Plaintiff did not discover the falsity of the "Made in USA"  
8 representation until after he purchased the product and opened it up at home).

9       17. Accordingly, Defendants were not entitled to lawfully make a "Made  
10 in USA" representation.

11       18. When Plaintiff, and Class Members, purchased Vehicles from  
12 Defendants, they saw and relied upon the unqualified "Made in USA"  
13 representation to make their purchasing decisions, which is typical of most  
14 California consumers, and they were deceived as a result of Defendants' actions.  
15 These purchasing decisions were supported by the "Made in USA" representation  
16 made by Defendants, which is absent from most of Defendants' competitors.  
17 Plaintiff believed at the time he purchased the Vehicle product that he was in fact  
18 supporting American jobs and the American economy.

19       19. Plaintiff suffered an "injury in fact" because Plaintiff's money was  
20 taken by Defendants as a result of Defendants' false "Made in USA" claim set  
21 forth on the offending product. Furthermore, he suffered an "injury in fact" by  
22 paying for something he believed was genuinely manufactured in the USA, when it  
23 was not.

24       20. On information and belief, the Vehicles at issue in this litigation were  
25 manufactured with foreign-made parts that are of inferior quality to their U.S.-  
26 manufactured counterparts. Essentially, the Vehicles are not worth the purchase  
27 price paid. Class Members are entitled to monetary damages, including but not  
28

1 limited to a complete refund of their purchase price.

2       21. U.S.-made component parts are subject to strict regulatory  
 3 requirements, such as environmental, labor, and safety standards. Foreign-made  
 4 component parts are not subject to the same U.S. manufacturing standards and are  
 5 inherently of lower quality than their U.S.-made counterparts. Moreover, foreign-  
 6 made component parts are less reliable and durable than their U.S.-made  
 7 counterparts. As such, the offending Vehicles, made with foreign-made  
 8 component parts (yet unlawfully labeled "Made in USA"), are of inferior quality,  
 9 less reliable, and fail more often.

10      22. Plaintiff and Class Members were undoubtedly injured as a result of  
 11 Defendants' false "Made in USA" representations that are at issue in this litigation.

### **CLASS ALLEGATIONS**

13      23. Plaintiff brings this action on behalf of himself as an individual and on  
 14 behalf of all other persons similarly situated in the State of California and  
 15 nationwide who purchased Defendants' Vehicles. Specifically excluded from the  
 16 class are any persons who have a controlling interest in Defendants, any of  
 17 Defendants' parent companies, subsidiaries, and Defendants' officers, directors,  
 18 managers, shareholders and members of their immediate families, and their heirs,  
 19 successors and assigns (the "Class"), pursuant to Code of Civil Procedure § 382  
 20 and Business & Professions Code § 17200 *et seq.* The class also does not include  
 21 any persons who previously filed suit against Defendants for similar violations of  
 22 California law and/or the Hon. Judge presiding over this matter and his or her  
 23 judicial staff.

24      24. The members of the Class are so numerous that joinder of all  
 25 members is impracticable. The disposition of their claims in a class action will  
 26 provide substantial benefits to the parties and the Court. On information and  
 27 belief, the exact number and identities of the members of the Class are  
 28

1 ascertainable from the records in Defendants' possession and/or within the  
2 business records of third-party retailers.

3       25. There is a well-defined community of interest in the questions of law  
4 and fact involved in this case.

5       26. It would be of benefit to the Court and Plaintiffs of this state for  
6 California to host this nationwide class action. California Claimants will benefit  
7 from this Court's hosting of a nationwide class action because resolution by  
8 California courts of the claims of class members outside of California, along with  
9 those of class members residing within California, will aid California claimants in  
10 their recovery and in the prosecution of this litigation. The pool of discoverable  
11 documents relating to the issues set out in the complaint will be larger, the pool of  
12 deponents will be larger and the financial consequences to Defendant of an adverse  
13 ruling will be more significant. All of these things can only act to benefit the  
14 California class in its prosecution of this litigation, while adding little if any  
15 additional burden on the California Courts due to the uniform false labeling  
16 practices at issue in this action.

17       27. It would be a waste of class resources and to the detriment of class  
18 members to require nationwide class members to litigate the issues set out in this  
19 complaint in forums all over the nation, having to retain and compensate multiple  
20 attorneys, experts and the like, and compensate those multiple attorneys and  
21 experts for their services, when one nationwide class counsel can oversee the entire  
22 nationwide litigation to their benefit at a fraction of the cost.

23       28. The hosting of a nationwide class would confer a substantial benefit  
24 on the California courts. The nationwide class will promote judicial economy by  
25 preventing a multiplicity of litigation in different states and inconsistent judgments  
26 on identical issues. A nationwide class is beneficial to California courts for  
27 reasons of comity. The adjudication of a nationwide class may increase the  
28

1 damages claimed and is based on identical false country of origin labeling  
2 practices nationwide.

3       29. A nationwide class would also produce positive by-products, as a  
4 large number of the Class members reside in California, as the adjudication of all  
5 claims will have a therapeutic effect on sellers outside of California who engage in  
6 fraudulent conduct within the state; will aid business enterprises in California by  
7 curtailing illegitimate competition; and will avoid the burden of multiple cases  
8 involving identical claims.

9       30. In addition, California also has a special obligation to undertake the  
10 nationwide class action because the State of California has permitted defendant to  
11 conduct the majority of its business in this state, on a per state basis. California  
12 has a special obligation and a compelling interest to control the litigation and  
13 ensure the protection of its residents who make up the largest portion of the  
14 nationwide class.

15       31. As to class members residing in California, the injury or damages  
16 from Defendants' acts arise within the State of California.

17       32. As to class members residing outside of California, claims for the  
18 injury or damage from Defendants' acts do not present a significant additional  
19 burden to the California courts, as there are no material variations in laws  
20 governing the claims. State law issues will not swamp common issues and defeat  
21 predominance. Defendants' uniform and false "Made in USA" country of origin  
22 labeling is unlawful not only under the laws of the State of California, but it is also  
23 unlawful pursuant to federal law, the laws of the remaining 49 states, and the  
24 District of Columbia because no jurisdiction permits a manufacturer to falsely label  
25 its product as "Made in USA."

26       33. The parties have a substantial connection with California because the  
27 greatest number of class members per state reside in California; on information and  
28

1 belief, Defendants were making and continue to make the most money from their  
 2 alleged fraudulent conduct through California sales to California consumers.  
 3 Discovery will confirm the exact numbers on these issues.

4       34. On information and belief, Defendants registered more sales of  
 5 offending products in California than they did in any other state. Defendants  
 6 collected and continue to collect more revenues from California sales than any  
 7 other state. More of the ill-gotten gains were collected in California than in any  
 8 other state and more of the material misrepresentations were made here. Thus  
 9 California has a compelling interest to proceed as to the nationwide class action  
 10 claims. No state has a more compelling interest than California in the prosecution  
of this action.

12       35. The benefit of a nationwide class action to the parties and the courts  
 13 will be substantial. A nationwide class will result in one judgment with respect to  
 14 the uniform country of origin labeling at issue. A nationwide class will result in  
 15 only one action – as opposed to multiple actions – with respect to the uniform  
 16 country of origin labeling at issue. It would be a waste of judicial resources  
 17 nationwide to require courts all over the nation to entertain identical actions when  
 18 one action could dispose of the litigation. A nationwide class will be beneficial to  
 19 Defendants in that they will not have to defend themselves with respect to the same  
 20 allegations in numerous forums.

21       36. On information and belief Defendants' have in their possession  
 22 documents and information that will demonstrate the special interest that  
 23 California has in hosting a nationwide class action.

24 **Definition of the California Subclasses**

25       37. The first California Subclass is under Plaintiff's First Cause of Action  
 26 and is defined as all consumers who reside in California and who purchased  
 27 Defendants' "Made in USA" labeled Vehicles that contained any foreign-made

1 component parts from February 15, 2007 to the present.

2       38. The second California Subclass is under Plaintiff's Second, Third, and  
 3 Fourth Causes of Action and is defined as all consumers who reside in California  
 4 and who purchased Defendants' "Made in the USA" labeled Vehicles that  
 5 contained any foreign-made component parts from February 15, 2007 to the  
 6 present.

7 **Other Class Allegations**

8       39. Plaintiff individually and on behalf of class members makes no direct  
 9 claims under federal law (beyond "borrowing" federal law violations for purposes  
 10 of California's UCL).

11       40. On information and belief, the exact numbers and identities of all  
 12 class members, are readily ascertainable from the records of Defendants and its  
 13 retailers.

14       41. All causes of action herein have been brought and may properly be  
 15 maintained as a class action pursuant to the provisions of Code of Civil Procedure  
 16 section 382 because there is a well-defined community of interest in the litigation  
 17 and the proposed class is easily ascertainable:

18           a. Numerosity: On information and belief, the Class is so  
 19 numerous that the individual joinder of all members would be impracticable.

20           b. Common Questions Predominate: Common questions of law  
 21 and fact exist as to all members of the Class, and those questions clearly  
 22 predominate over any questions that might affect members individually. These  
 23 common questions of law and fact include, for example, whether Defendants  
 24 violated Section 17533.7 of the California Business & Professions Code by  
 25 misrepresenting the national origin of its Vehicles because component parts within  
 26 these products are manufactured outside the United States and whether  
 27 Defendants' actions in this regard constitute an unfair, unlawful, or fraudulent

1 business practice pursuant to Section 17200 et seq. of the California Business &  
 2 Professions Code.

3 **Other Class Allegations**

4       42. Plaintiff individually and on behalf of class members makes no direct  
 5 claims under federal law (beyond "borrowing" federal law violations for purposes  
 6 of California's UCL).

7       43. On information and belief, the exact numbers and identities of all  
 8 class members, are readily ascertainable from the records of Defendants and its  
 9 retailers.

10      44. All causes of action herein have been brought and may properly be  
 11 maintained as a class action pursuant to the provisions of Code of Civil Procedure  
 12 section 382 because there is a well-defined community of interest in the litigation  
 13 and the proposed class is easily ascertainable:

14       a. **Numerosity**: On information and belief, the Class is so  
 15 numerous that the individual joinder of all members would be impracticable.

16       b. **Common Questions Predominate**: Common questions of law  
 17 and fact exist as to all members of the Class, and those questions clearly  
 18 predominate over any questions that might affect members individually. These  
 19 common questions of law and fact include, for example, whether Defendants  
 20 violated Section 17533.7 of the California Business & Professions Code by  
 21 misrepresenting the national origin of its Vehicles because component parts within  
 22 these products are manufactured outside the United States and whether  
 23 Defendants' actions in this regard constitute an unfair, unlawful, or fraudulent  
 24 business practice pursuant to Section 17200 et seq. of the California Business &  
 25 Professions Code.

26       c. **Typicality**: On information and belief, Plaintiff's claims are  
 27 typical of the claims of the members of the Class. Plaintiff and all members of the

1 Class sustained damages arising out of Defendant's common course of conduct  
2 complained herein.

3           d.     Adequacy: Plaintiff will fairly and adequately protect the  
4 interest of the members of the Class because Plaintiff has no interests which are  
5 adverse to the interests of absent class members and because Plaintiff has retained  
6 counsel who possesses significant litigation experience regarding alleged  
7 violations of consumer statutes.

8                   e. Superiority: A class action is superior to other available means  
9 for the fair and efficient adjudication of this controversy since individual joinder of  
10 all members would be impracticable. Class action treatment will permit a large  
11 number of similarly situated persons to prosecute their common claims in a single  
12 forum simultaneously, efficiently and without the unnecessary duplication of effort  
13 and expense that numerous individual actions would engender. Furthermore, since  
14 most class members' individual claims for damages are likely to be modest, the  
15 expenses and burdens of litigating individual actions would make it difficult or  
16 impossible for individual members of the Class to redress the wrongs done to  
17 them. An important public interest will be served by addressing the matter as a  
18 class action, substantial economies to the litigants and to the judicial system will be  
19 realized and the potential for inconsistent or contradictory judgments will be  
20 avoided.

## **FIRST CLAIM FOR RELIEF**

**(Violation of Business & Professions Code § 17200 *et seq.* Against All Defendants)**

24       45. Plaintiff realleges and incorporates herein by reference all of the  
25 allegations contained in Paragraphs 1 through 44, inclusive, of this complaint as  
26 though fully set forth herein.

27 ||| 46. Business & Professions Code § 17200 *et seq.* provides that unfair

1 competition means and includes "any unlawful, unfair or fraudulent business act or  
 2 practice and unfair, deceptive, untrue or misleading marketing."

3       47. By and through their conduct, including the conduct detailed above,  
 4 Defendants engaged in activities which constitute unlawful, unfair, and fraudulent  
 5 business practices prohibited by Business & Professions Code § 17200 *et seq.*  
 6 Beginning at an exact date unknown as yet and continuing up through the present  
 7 Defendants committed acts of unfair competition, including those described above,  
 8 by engaging in a pattern of "unlawful" business practices, within the meaning of  
 9 Business & Professions Code § 17200 *et seq.*, by manufacturing, distributing,  
 10 marketing, and/or selling products with a false country of origin designation and  
 11 violating Business & Professions Code § 17533.7 by falsely claiming that the  
 12 Vehicles are "Made in USA" when they are in fact made with component parts  
 13 manufactured outside of the United States.

14       48. Beginning at an exact date unknown as yet and continuing up through  
 15 the present, Defendants committed acts of unfair competition that are prohibited by  
 16 Business & Professions Code § 17200 *et seq.* Defendants engaged in a pattern of  
 17 "unfair" business practices that violate the wording and intent of the statutes, by  
 18 engaging in practices that threaten an incipient violation of law, or violate the  
 19 policy or spirit of laws because its effects are comparable to or the same as a  
 20 violation of the law by manufacturing, distributing, and marketing the Vehicles  
 21 with a false country of origin designation and violating Business & Professions  
 22 Code § 17533.7 by falsely claiming that the products referenced herein are "Made  
 23 in USA" when they are in fact made with component part(s) manufactured outside  
 24 of the United States.

25           a. Alternatively, Defendants engaged in a pattern of "unfair"  
 26 business practices that violate the wording and intent of the statutes, by engaging  
 27 in practices that are immoral, unethical, oppressive or unscrupulous, the utility (if  
 28

1 any) of which conduct is far outweighed by the harm done to consumers and public  
 2 policy by manufacturing, distributing, marketing, and advertising the Vehicles with  
 3 the false claim that the products referenced herein are "Made in USA."

4               b. Alternatively, Defendants engaged in a pattern of "unfair" business  
 5 practices that violate the wording and intent of the statutes, by engaging in  
 6 practices wherein: (1) the injury to the consumer was substantial; (2) the injury was  
 7 not outweighed by any countervailing benefits to consumers or competition; and  
 8 (3) the injury was of the kind that the consumers themselves could not reasonably  
 9 have avoided by manufacturing, distributing, marketing, and advertising the  
 10 Vehicles with the false claim that the products referenced herein are "Made in  
 11 USA."

12               49. Beginning at an exact date unknown as yet and continuing up through  
 13 the present, Defendants committed acts of unfair competition, including those  
 14 described above, prohibited by Business & Professions Code § 17200 *et seq.* by  
 15 engaging in a pattern of "fraudulent" business practices within the meaning of  
 16 Business & Professions Code § 17200 *et seq.*, by manufacturing, distributing,  
 17 marketing, and/or selling products with a false country of origin designation and  
 18 violating Business & Professions Code § 17533.7 by falsely claiming that the  
 19 Vehicles referenced herein are "Made in USA."

20               50. Defendants engaged in these unlawful, unfair and fraudulent business  
 21 practices for the primary purpose of collecting unlawful and unauthorized monies  
 22 from Plaintiff and all others similarly situated, thereby unjustly enriching  
 23 Defendants.

24               51. As a result of the repeated violations described herein, Defendants  
 25 received unearned commercial benefits at the expense of their competitors and the  
 26 public.

27               52. Defendants' unlawful, unfair and fraudulent business practices present  
 28

1 a continuing threat to the public in that Defendants continue to engage in unlawful  
2 conduct.

3       53. Such acts and omissions are unlawful and/or unfair and/or fraudulent  
4 and constitute a violation of Business & Professions Code § 17200 *et seq.* Plaintiff  
5 reserves the right to identify additional violations by Defendants as may be  
6 established through discovery.

7       54. As a direct and legal result of their unlawful, unfair and fraudulent  
8 conduct described herein, Defendants have been and will be unjustly enriched by  
9 the receipt of ill-gotten gains from customers, including Plaintiff, who unwittingly  
10 provided their money to Defendants based on Defendants' fraudulent country of  
11 origin designation.

12       55. Plaintiff suffered an "injury in fact" because Plaintiff's money was  
13 taken by Defendants as a result of Defendants' false "Made in USA" claims set  
14 forth on the Vehicles. See also Paragraphs 19-22 herein.

15       56. Plaintiff and Class Members were undoubtedly injured as a result of  
16 Defendants' false "Made in USA" representations that are at issue in this litigation.

17       57. In prosecuting this action for the enforcement of important rights  
18 affecting the public interest, Plaintiff seeks the recovery of attorneys' fees pursuant  
19 to Code of Civil Procedure § 1021.5, which is available to a prevailing plaintiff  
20 who wins relief for the general public.

## **SECOND CLAIM FOR RELIEF**

**(Violation of Business & Professions Code § 17533.7 Against All Defendants)**

23       58. Plaintiff realleges and incorporates by reference Paragraphs 1 through  
24 57, inclusive, as if set forth in full herein.

25 || 59. Business & Professions Code § 17533.7 provides:

27 It is unlawful for any person, firm, corporation or

1 association to sell or offer for sale in this State any  
 2 merchandise on which merchandise or on its container  
 3 there appears the words "Made in USA" "Made in  
 4 America," "U.S.A." or similar words when the  
 5 merchandise or **any article, unit, or part thereof**, has  
 6 been entirely or substantially made, manufactured, or  
 produced outside of the United States. (Emphasis  
 added).

7 60. As stated by the California Supreme Court in *Kwikset v. Superior*  
 8 *Court* (January 27, 2011) 51 Cal.4th 310, 328-29:

9  
 10 **Simply stated: labels matter.** The marketing industry is  
 11 based on the premise that labels matter, that consumers  
 12 will choose one product over another similar product  
 13 based on its label and various tangible and intangible  
 14 qualities they may come to associate with a particular  
 15 source....In particular, to some consumers, the "Made in  
 16 U.S.A." label matters. A range of motivations may fuel  
 17 this preference, from the desire to support domestic jobs,  
 18 to beliefs about quality, to concerns about overseas  
 19 environmental or labor conditions, to simple patriotism.  
 20 The Legislature has recognized the materiality of this  
 21 representation by specifically outlawing deceptive and  
 22 fraudulent "Made in America" representations. (§  
 23 17533.7; see also Civ.Code, § 1770, subd. (a)(4)  
 24 [prohibiting deceptive representations of geographic  
 25 origin].) The object of section 17533.7 "is to protect  
 26 consumers from being misled when they purchase  
 27 products in the belief that they are advancing the interests  
 28 of the United States and its industries and workers...".

29  
 30 61. Defendants violated Business & Professions Code § 17533.7 by  
 31 manufacturing, selling and/or offering to sell merchandise in the State of California  
 32 with the "Made in USA" label as fully set forth herein. On information and belief,  
 33 all of Defendants' Vehicle products, including the specific Vehicle product

1 purchased by Plaintiff, contain component parts that are manufactured outside of  
 2 the United States.

3       62. It is alleged on information and belief that Defendants' violations of  
 4 Business & Professions Code § 17533.7 was done with awareness of the fact that  
 5 the conduct alleged was wrongful and were motivated solely for increased profit.  
 6 It is also alleged on information and belief that Defendants did these acts knowing  
 7 the harm that would result to Plaintiff and that Defendants did these acts  
 8 notwithstanding that knowledge.

9       63. As a direct and proximate result of Defendants' violations of Business  
 10 & Professions Code § 17533.7, Plaintiff and Class members are entitled to  
 11 restitution of excess monies paid to Defendants by Plaintiff and Class members  
 12 relating to the false "Made in USA" claims on Defendants' Vehicles and/or 100%  
 13 restitution of their purchase price.

14       64. Plaintiff suffered an "injury in fact" because Plaintiff's money was  
 15 taken by Defendants as a result of Defendants' false "Made in USA" claims set  
 16 forth on the Vehicle. Furthermore, he suffered an "injury in fact" by paying for  
 17 something he believed was genuinely manufactured in the USA, when it was not.  
 18 See also Paragraphs 19-22 herein.

19       65. Plaintiff and Class Members were undoubtedly injured as a result of  
 20 Defendants' false "Made in USA" representations that are at issue in this litigation.

21       66. In prosecuting this action for the enforcement of important rights  
 22 affecting the public interest, Plaintiff seeks to recover attorneys' fees pursuant to  
 23 Code of Civil Procedure § 1021.5, which is available to a prevailing plaintiff who  
 24 wins relief for the general public.

### **THIRD CLAIM FOR RELIEF**

#### **(Violation of Consumers Legal Remedies Act Against Defendants)**

25       67. Plaintiff realleges and incorporates herein by reference all of the  
 26  
 27  
 28

1 allegations contained in Paragraphs 1 through 66, inclusive, of this complaint as  
 2 though fully set forth herein.

3       68. California Civil Code § 1750 *et seq.* (entitled the Consumers Legal  
 4 Remedies Act) provides a list of “unfair or deceptive” practices in a “transaction”  
 5 relating to the sale of “goods” or “services” to a “consumer.” The Legislature’s  
 6 intent in promulgating the Consumers Legal Remedies Act is expressed in Civil  
 7 Code § 1760, which provides, *inter alia*, that its terms are to be:

8                     [C]onstrued liberally and applied to promote its underlying  
 9 purposes, which are to protect consumers against unfair and  
 10 deceptive business practices and to provide efficient and  
 economical procedures to secure such protection.

11       69. Defendants’ products constituted “goods” as defined in Civil Code §  
 12 1761(a).

13       70. Plaintiff, and Class members, are each a “Consumer” as defined in  
 14 Civil Code § 1761(d).

15       71. Plaintiff’s purchase of Defendants’ Vehicle product constituted a  
 16 “transaction” as defined in Civil Code § 1761(e).

17       72. Civil Code § 1770, subdivisions (a)(4) and (a)(9) provide that “[t]he  
 18 following unfair methods of competition and unfair or deceptive acts or practices  
 19 undertaken by any person in a transaction intended to result or which results in the  
 20 sale or lease of goods or services to any consumer are unlawful: Using deceptive  
 21 representations or designations of geographic origin in connection with goods or  
 22 services....Advertising good or services with intent not to sell them as marketed.”

23       73. Defendants violated Civil Code § 1770, subdivisions (a)(4) and (a)(9)  
 24 by marketing and representing that their products are “Made in USA” when they  
 25 actually contain component parts that are manufactured outside of the United  
 26 States.

27       74. It is alleged on information and belief that Defendants’ violations of  
 28

1 the Consumer Legal Remedies Act set forth herein were done with awareness of  
2 the fact that the conduct alleged was wrongful and were motivated solely for  
3 increased profit. It is also alleged on information and belief that Defendants did  
4 these acts knowing the harm that would result to Plaintiff and that Defendants did  
5 these acts notwithstanding that knowledge.

6 75. Plaintiff provided the requisite 30-day notice to PEG PEREGO, which  
7 was sent pursuant to the Consumer Legal Remedies Act on or about June 30, 2014  
8 (hereinafter the "CLRA Letter"). Therefore, Plaintiff and Class Members seek  
9 actual and/or statutory damages against PEG PEREGO in this litigation pursuant to  
10 Civil Code § 1780. The 30-day notice complied with the relevant provisions of the  
11 Consumers Legal Remedies Act as it was a demand to correct, repair, replace, or  
12 otherwise rectify the false country of origin designation as it relates to offending  
13 and violative Vehicle products sold in California pursuant to California Civil Code  
14 § 1782(a).

15 76. As of the date of this filing, Defendants never offered to correct,  
16 repair, replace, or otherwise rectify the false country of origin designation as it  
17 relates to offending and violative Vehicle products sold in California (as requested  
18 in the CLRA Letter).

19 77. As a direct and proximate result of Defendants' violations of the  
20 Consumers Legal Remedies Act, Plaintiff and Class members are entitled to the  
21 following remedies: (a) actual damages according to proof at time of trial; (b) a  
22 declaration that Defendants violated the Consumers Legal Remedies Act; (c) an  
23 injunction preventing Defendants' unlawful actions; and (d) an award of punitive  
24 damages pursuant to Civil Code § 1780(a)(4).

25 78. Punitive damages are warranted in this case because knowingly  
26 selling falsely labeled "Made in USA" products (as Defendants have been doing, at  
27 a minimum since their receipt of Plaintiff's notice under the Consumer Legal  
28

1 Remedies Act) constitutes malice, oppression, and/or fraud as defined by Civil  
2 Code § 3294.

- 3 a. "Malice" is defined by statute to mean "conduct which is intended  
4 by the defendant to cause injury to the plaintiff or despicable  
5 conduct which is carried on by the defendant with a willful and  
6 conscious disregard of the rights or safety of others." Knowingly  
7 selling products containing shoddy foreign-made component parts  
8 as "Made in USA" constitutes malice.  
9 b. "Fraud" is defined by statute to mean "an intentional  
10 misrepresentation, deceit, or concealment of a material fact known  
11 to the defendant with the intention on the part of the defendant of  
12 thereby depriving a person of property or legal rights or otherwise  
13 causing injury." Knowingly selling products containing shoddy  
14 foreign-made component parts as "Made in USA" constitutes  
15 fraud.

16 79. Plaintiff suffered an "injury in fact" because Plaintiff's money was  
17 taken by Defendants as a result of Defendants' false claims set forth on the Vehicle  
18 product. Furthermore, he suffered an "injury in fact" by paying for a substandard  
19 product that he believed was genuinely manufactured in the USA, when it was not.

20 80. Plaintiff and Class Members were injured as a result of Defendants'  
21 false "Made in USA" representations that are at issue in this litigation.

22 81. Plaintiff is filing an Affidavit of Venue along with this Complaint to  
23 be in compliance with the requirement set forth in Civil Code § 1780(c).

24 WHEREFORE, Plaintiff prays for relief and judgment against Defendants,  
25 as follows:

26 **PRAYER**  
27

- 28 1. Damages according to proof;  
2. For a judgment declaring this action to be a proper nationwide class

1 action case;

2       3. A declaration that Defendants violated the provisions of California  
3 Business & Professions Code § 17200 *et seq.*;

4       4. A declaration that Defendants violated Civil Code § 1750 *et seq.*;

5       5. Pursuant to Business & Professions Code § 17204 and pursuant to the  
6 equitable powers of this Court, a judgment enjoining Defendants, their  
7 subsidiaries, affiliates, and their successors, agents, servants, officer, directors,  
8 employees, and all persons, acting in concert with them, directly or indirectly, from  
9 engaging in conduct violative of Business & Professions Code § 17200 *et seq.* as  
10 more fully described above;

11       6. Pursuant to Business & Professions Code § 17204, a judgment  
12 requiring Defendants to provide restitution to compensate, and to restore all  
13 persons in interest, including all Class Members, with all monies acquired by  
14 means of Defendants' unfair competition, including a refund of the monies Class  
15 Members paid to purchase offending Vehicles plus sales taxes;

16       7. Plaintiff and each of the other members of the Class recover the  
17 amounts by which Defendants have been unjustly enriched;

18       8. Plaintiff and each of the other members of the Class be entitled to  
19 rescission and are entitled to a refund of the monies they paid to purchase  
20 offending Vehicles plus sales taxes;

21       9. Plaintiff's reasonable attorneys' fees as it relates to all causes of  
22 action as provided by law;

23       10. For punitive damages as to the Third Cause of Action only;

24       11. For costs of suit incurred herein;

25       12. For prejudgment interest as allowed by law; and

26       13. For such other and further relief as this Court finds just, equitable and  
27 proper, including, but not limited to, the remedy of disgorgement.

## **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38, Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury with respect to all issues triable to a jury.

Dated: March 16, 2015

Respectfully submitted,

DEL MAR LAW GROUP, LLP

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